

Message Text

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ACTION L-03

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E.O. 11652: N/A

TAGS: PORG, UNCITRAL

SUBJECT: UNCITRAL WORKING GROUP MEETING ON FORMATION
OF CONTRACTS

1. SUMMARY: WG WILL DEAL PRIMARILY WITH FORMATION OF
CONTRACTS, AND WITH VALIDITY ONLY AS RELEVANT. ARTICLES 1-4
DISCUSSED AT GREAT BUT INCONCLUSIVE LENGTH, SENT TO DRAFTING
GROUPS FOR RESOLUTION.

2. BACKGROUND. WG IS CONSIDERING SECRETARIAT DRAFT RE-
VISIONS OF 1964 UNIFORM LAW ON FORMATION OF CONTRACTS FOR
INTERNATIONAL SALE OF GOODS (ULF). US HAS FEW SIGNIFICANT
PROBLEMS WITH ULF IN OLD OR NEW DRAFT, BUT HAS NOT ACCEDED
BECAUSE CLOSELY-LINKED 1964 UNIFORM LAW ON THE INTERNATIONAL
SALE OF GOODS (ULIS) IS UNACCEPTABLE. ULIS REVISIONS WILL BE
CONSIDERED IN LATE SPRING IN VIENNA.

3. US OBJECTIVE. US SUPPORTS DEVELOPMENT OF INTERNATIONAL
RULES FOR CONTRACTS FOR SALE OF GOODS. GOAL AT THIS WG
MEETING TO CLARIFY AMBIGUITIES IN 1964 ULF, ALONG LINES OF
SECRETARIAT DRAFT WHERE APPROPRIATE.

4. ATTENDANCE: DELEGATES PRESENT FROM 14 COUNTRIES, OBSERVERS
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FROM 9 COUNTRIES AND 2 IO'S. US DEL INCLUDES:

REP: PROF. ALLAN FARNSWORTH, COLUMBIA LAW SCHOOL

ALTERNATES: PROF. JOSEPH PERILLO, FORDHAM LAW SCHOOL

MR. PETER OLSON, DEPT. OF STATE

ADVISER: PROF. JOSEPH SWEENEY, FORDHAM LAW SCHOOL

5. PRELIMINARY MATTERS: MR.J. BARRERA-GRAF (MEXICO)
UNANIMOUSLY SELECTED CHAIRMAN, MR. GYULA EORSI (HUNGARY)
RAPPORTEUR. MORNING DEVOTED TO DISCUSSION WHETHER TO DISCUSS
BOTH FORMATION AND VALIDITY OF CONTRACTS, OR
FORMATION ALONE. E. EUROPEANS IN GENERAL PREFERRED WIDER
DISCUSSION. AT SUGGESTION OF US DEL, DECISION TO CONSIDER
FORMATION FIRST, INTRODUCING ELEMENTS OF VALIDITY WHERE
APPROPRIATE.

6. ARTICLE 1: (SCOPE OF ULF) CONSIDERATION POSTPONED
UNTIL DETERMINED WHETHER FORMATION AND VALIDITY WILL FORM
TWO CONVENTIONS, IN WHICH CASE ART. 1 IS NECESSARY, OR ONLY ONE.

7. ARTICLE 2 (SCOPE OF PERMITTED DEROGATION FROM TERMS OF
ULF): SECRETARIAT DRAFT GENERALLY CRITICIZED
ON BASIS OF TERMINOLOGY "MORE STRINGENT" AND CONCEPT
(PARTY AUTONOMY SHOULD BE ABSOLUTE). DECIDED TO DETERMINE
AS WG PROCEEDS WHICH ARTICLES COULD APPROPRIATELY BE MODIFIED
BY PARTIES, AND WHICH COULD NOT.

8. ARTICLE 3 (EVIDENCE SUFFICIENT TO PROVE CONTRACT).
DECIDED TO LET VIENNA ULIS-REVISION CONFERENCE DECIDE
WHETHER WITNESSES ARE SUFFICIENT TO PROVE CONTRACT
(US) OR WHETHER WRITING IS NECESSARY (E. EUROPEANS, MEXICO),
WHEN DECIDES ON ULIS DRAFT ARTICLE 11.

9. ARTICLE 3 A (MODIFICATION AND RESCISSION OF CONTRACT):
E. EUROPEANS PRESSED FOR REQUIREMENT OF WRITTEN MODIFICATION.
AFTER EXTENSIVE DISCUSSION OF "VAGUE" TERM "GOOD FAITH",
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SENT TO DRAFTING GROUP FOR RESOLUTION.

10. ARTICLE 4 (MINIMUM CONTENT OF OFFER): PARAGRAPH 1
(OBJECTS OF OFFERS): AFTER NUMEROUS DRAFTING SUGGESTIONS
MADE TO ACCOMMODATE DIFFERENCES REGARDING OFFERS TO THE
PUBLIC, REFERRED TO DRAFTING GROUP. PARAGRAPH 2 (INTER-
PRETATION): POSTPONED UNTIL REST OF ARTICLE 4 CONSIDERED.
LATER DECIDED TO CONSIDER, WITH ULIS DRAFT ARTICLES 3 - 5, AS
SEPARATE ULF ARTICLE. PARAGRAPHS 3 AND 4 (DEFINITENESS
REQUIRED -- PRICE) : EXTENSIVE DEBATE ON QUESTION OF
UNSPECIFIED PRICE TERM. AFTER COMING FULL CIRCLE TO
MODIFIED ORIGINAL VERSION, SENT TO DRAFTING GROUP.
PARAGRAPH 5 (DEFINITENESS -- QUANTITY) WAS DROPPED,
AND DRAFTING GROUP TOLD TO INTEGRATE ESSENCE INTO
PARAGRAPH 3.
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